

2. There Are Compelling Policy Reasons for the Commission To Require Local Exchange Carriers To Provide Billing and Collection

Although SBC opposes any Commission requirement that LECs must provide billing and collection services for CPP,⁵¹ its comments are nonetheless on target in describing what is at stake with regard to billing and collection for CPP. SBC notes that leakage (“the inability to be compensated for all calls”⁵²):

presents the potential to increase rates for the calling party. The costs of fixing leakage and the inability to bill for *all* calls is likely to raise the rates charged to parties who call CMRS customers with CPP and who do not present a “leakage” problem. If that is the case, CPP calling would be suppressed, the prices increased and the service would become virtually unmarketable, both to calling parties and to wireless customers who previously desired and selected the CPP option.⁵³

One does not need to agree with SBC’s predictions regarding the effect of leakage on calling party rates in order to understand the soundness of SBC’s central point: if CPP providers cannot bill and collect for all their calls, then they will not have a marketable service.

⁵¹ See SBC Comments at 8.

⁵² *Id.* at 10. Although SBC gives specific examples of leakage that do not relate to the absence of LEC billing (such as the inability to bill and collect for CPP calls from payphones), SBC also seems to contemplate that its use of the term would embrace situations in which LECs refuse to bill and collect for CPP; thus, SBC indicates that “[t]he leakage problem caused by calls from CLECs [competitive local exchange carriers] and other wireless carriers raises the additional issue of whether all carriers would be forced to bill and collect for CPP. Many of the existing wireless billing systems are not designed to bill for other carriers and would need to be enhanced to do so at considerable expense.” *Id.* at 10 n.17. Cases in which LECs do not bill and collect for CPP would seem to raise the same leakage problem as the one cited by SBC in its reference to competitive LECs and wireless carriers.

⁵³ *Id.* at 11 n.18 (emphasis in original).

The issue for the Commission becomes whether the nature and extent of the billing problems surrounding CPP offerings call for regulatory action. For the Commission to justify the exercise of its ancillary jurisdiction to solve these problems, by requiring that LECs provide billing and collection to CPP providers, the Commission must conclude (in addition to finding that CPP has the potential to advance statutory purposes) that the LECs can provide effective billing and collection services that will facilitate the offering of CPP, that CPP providers have no other viable alternatives for billing and collection, and that the imposition of a billing and collection obligation would not impose undue burdens or costs upon LECs. Pilgrim examines each of these issues in turn in the following sections, demonstrating that the record of this proceeding has further cleared the way for the Commission to invoke its ancillary jurisdiction to require LEC billing and collection.⁵⁴

⁵⁴ See *Section 255 Order* at para. 106:

We will not ignore a record that demonstrates that our failure to apply accessibility requirements to voicemail and interactive menus will substantially undermine implementation of these significant provisions. Where . . . the record demonstrates that implementation of the statute will be thwarted absent use of our ancillary jurisdiction, our assertion of jurisdiction is warranted. Our authority should be evaluated against the backdrop of an expressed congressional policy favoring accessibility for persons with disabilities. This backdrop serves to buttress the actions taken today, not limit it.

In the present case, CPP has the potential to advance several express statutory policies, and, thus, these policies would not be protected or promoted if CPP is not able to be tested in the marketplace. Moreover, the record amply demonstrates that, in the absence of an exercise of ancillary jurisdiction by the Commission to require LECs to provide billing and collection, CPP cannot receive a fair marketplace test.

a. Local Exchange Carriers Are Uniquely Situated To Furnish Billing and Collection for Calling Party Pays

If there were any basis for concluding that LECs are not capable of effectively providing billing and collection services to support CPP offerings, then it would be an unreasonable exercise of the Commission's authority to require LECs to make such services available. To the contrary, however, there is, as one might expect, abundant evidence demonstrating that LECs have unique and unparalleled resources enabling them to provide such services.

As Pilgrim observed in our comments,⁵⁵ there are examples in which LECs have been providing billing and collection services for CPP, suggesting that LECs have the capabilities in place to accept call data from CPP providers, combine this data with information maintained in LEC databases, calculate charges on the basis of these records, generate and mail bills to calling parties reflecting these charges, record payments received, provide appropriate customer care activities in conjunction with the furnishing of CPP bills, and provide collection services. Moreover, in responding to the *CPP Rulemaking Notice*, a number of LECs have indicated that they are engaged in providing billing and collection services to CPP providers,⁵⁶ or that they believe that it would be viable for CPP providers to negotiate with LECs to obtain billing and collection.⁵⁷

⁵⁵ Pilgrim Comments at 30-31 & n.72.

⁵⁶ See Cincinnati Bell Comments at 2; US West Comments at 20.

⁵⁷ See Ameritech Comments at 5-6; Bell Atlantic Comments at 5 ("Bell Atlantic telephone companies are happy to bill CPP calls"); GTE Service Corporation (GTE) Comments at 33.

This further supports the conclusion that LECs possess the capabilities needed to provide this service to CMRS carriers.⁵⁸

In addition, other parties commenting in the proceeding have observed that the existing wireline infrastructure has the capabilities to provide effective billing and collection services. For example, Nortel comments that “it is clear . . . that . . . the technology and most of the infrastructure . . . to facilitate cost efficient billing and collection services is . . . currently available [and that] most of these technologies and most of the referenced infrastructure presently reside in the wireline public switched telephone network”⁵⁹ This leads Nortel to conclude that “the most efficient and cost effective means of delivering a nationwide CPP system would require significant involvement of wireline carriers.”⁶⁰

AirTouch submitted a study with its comments⁶¹ that demonstrated that “ILECs are particularly well-suited to provide CPP billing and collection services.”⁶² The Katz and Majerus Study, in supporting this conclusion, pointed out that ILECs have billing name and address

⁵⁸ One party has even suggested that LECs could help facilitate collection of CPP charges by blocking a customer’s access to CPP services until outstanding debts are paid. Public Utilities Commission of Ohio (Ohio PUC) Comments at 13.

⁵⁹ Nortel Networks Inc. (Nortel) Comments at 4.

⁶⁰ *Id.*

⁶¹ AirTouch Comments, Attachment A, “Declaration of Dr. Michael L. Katz and David W. Majerus: ILEC Market Power in Billing and Collection,” Sept. 17, 1999 (Katz and Majerus Study).

⁶² Katz and Majerus Study at 8. *See* Billing Coalition Comments at 3 (LECs are capable of providing billing and collection to third parties for intermittent services, as illustrated by their current provision of billing and collection for 10-10-XXX “dial around” services without any technical or economic difficulties).

(BNA) databases; they have bill-generating software in place that has the capability to calculate applicable local taxes for telecommunications services; there are minimal incremental costs associated with CPP billing; and ILECs already have an infrastructure in place for collecting payments from end users.⁶³ Finally, PCIA observes that ILECs have unique advantages as providers of billing services, many of which are a direct result of the ILECs' status as monopoly providers of local exchange service. PCIA suggests that the economies of scale for ILEC billing and collection are significant, and that the incremental cost of including additional call billing information in bills already produced by the ILECs is *de minimis*.⁶⁴

No one mounts a serious challenge to these observations in the record. Pilgrim believes that it is reasonable to stipulate that (as Nortel has observed) wireline carriers have the infrastructure in place to facilitate CPP billing and collection. The question, then, is whether there are policy reasons for the Commission to require that this infrastructure be made available.

**b. Wireless Carriers Cannot Rely upon Other Means
To Bill and Collect For Calling Party Pays**

The issue of whether CMRS providers are able to do their own billing and collection for CPP (or arrange for non-LEC billing and collection) is perhaps the most central question of this rulemaking. If CMRS providers can successfully bill and collect for CPP without relying on LEC services, then there may not be any need for the Commission to exercise its ancillary jurisdiction. This would be the case even if the Commission were to find (as it would be compelled to do based on the current record) that LECs have the capability to provide billing and collection for

⁶³ Katz and Majerus Study at 8-9.

⁶⁴ PCIA Comments at 39-40.

CPP, and that they can do so without any undue burdens or unrecouped costs. If there is a basis to conclude that CMRS carriers could effectively bill and collect for CPP without using LEC services, then the Commission could also conclude that CPP could gain a fair test in the marketplace, and that its potential to advance statutory goals might be realized, without the need for any Commission intervention with regard to billing and collection.

On the other hand, if there is no basis to support a conclusion that CMRS carriers can successfully bill and collect for CPP without using LEC services, then the Commission is left with two choices. The Commission could conclude that, as matters have turned out, it does not even need to reach this issue because CPP does not hold any potential to advance statutory goals, thus making regulatory action inadvisable. As we have discussed in our comments and in the earlier sections of these reply comments, Pilgrim does not believe there is a reasonable basis for such a conclusion. The remaining choice for the Commission is to take action to ensure that LEC billing and collection is available for CPP. Thus, in Pilgrim's view, much is at stake in evaluating whether billing and collection can work for CPP with LECs absent from the picture.

This is not a close question.

As Pilgrim detailed in our comments,⁶⁵ substantial evidence and arguments were presented to the Commission in response to the *CPP Notice of Inquiry* explaining why it would be uneconomic for CMRS carriers to attempt to market CPP without access to LEC billing and collection. Submissions in response to the *CPP Rulemaking Notice* have not changed this picture, but have brought it into even sharper focus.

⁶⁵ See Pilgrim Comments at 9-13, 25-27.

The record is rich with detailed information chronicling the difficulties that can be expected if CMRS providers attempt to bill and collect without any access to LEC services, and supporting the conclusion that there cannot be “a successful calling party pays system without the landline telephone companies doing the billing and collection for wireline to wireless calls.”⁶⁶ AirTouch, for example, argues persuasively that CMRS providers simply will not offer CPP in the absence of LEC billing and collection because, without the LEC services, CMRS carriers would face uneconomic levels of billing expense, substantial levels of uncollected revenue, and increased consumer inconvenience and confusion.⁶⁷

Many parties have demonstrated that it would be prohibitively expensive for CMRS providers to attempt their own billing and collection, and that non-LEC alternatives are not adequate to make CPP offerings economically viable.⁶⁸ In this regard, AirTouch explains that the eco-

⁶⁶ Merrill Lynch, “The Next Generation III: Wireless in the U.S.,” at 52-53 (Mar. 10, 1999), *quoted in* AirTouch Comments at 25. *See* Billing Coalition Comments at 2; PCIA Comments at 33-34; VoiceStream Comments at 5.

⁶⁷ AirTouch Comments at 12. *See* PCIA Comments at 34 (“No economically viable alternative to ILEC delivery of a bill to end users currently exists, nor can the Commission expect that CMRS providers or any third party will be able over the near or medium term to replicate the competitive advantage that ILECs enjoy in this area.”).

⁶⁸ *See* AirTouch Comments at 16-17 (AirTouch has discussed billing and collection with utilities, has also fully explored introducing a CPP product that would require all calling parties to enter a credit card or calling card number, and has concluded that these approaches are not feasible); Katz and Majerus Study at 9-14 (discussing inadequacy of clearinghouses, interexchange carriers (IXCs), credit card companies, cable companies, and utilities as alternatives for CPP billing and collection); PCIA Comments at 33-34, 39-41; Sprint Comments at 7-8; USCC Comments at 10 n.5. Some parties have taken issue with this point of view, arguing that the purpose of any Commission-mandated LEC billing and collection presumably would be to protect the ability of CMRS providers to offer CPP cost effectively, but that such action would constitute Commission intervention in the marketplace to regulate the costs of providing a particular competitive service, and that, as competition develops, it is less and less appropriate for regulators to intervene to protect against the costs incurred by any one group of providers. *See, e.g.,* California Public

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nomics of separate billing for CPP would engulf any efficiencies that CMRS carriers might achieve with regard to the use of more efficient rating, recording, and billing equipment made available through new technologies.⁶⁹ The reason for this, AirTouch demonstrates, is that the cost of rendering separate bills is too high relative to the small amount of revenue that each bill represents,⁷⁰ and the level of uncollected revenue is too great.⁷¹

Utilities Commission and the People of the State of California (California) Comments at 14. Pilgrim believes this line of argument understates the problem: the weight of the evidence in the record suggests not merely that it would be more costly for CMRS carriers to offer CPP in the absence of LEC billing, but rather that CPP simply cannot sustain itself in the marketplace without the availability of LEC billing and collection. Thus, the issue for the Commission here is not whether to intervene for purposes of improving the ratio between costs and earnings for CMRS carriers, but rather for purposes of enabling a marketplace test for a service that has the potential to benefit competition and consumers. Another party makes the suggestion that CMRS carriers could minimize their billing and collection costs (and avoid the expense of purchasing LEC billing and collection services) by doing their own billing but issuing bills on a quarterly, rather than a monthly, basis. SBC Comments at 8 n.12. Quarterly billing to calling parties, however, would almost surely exacerbate an already severe uncollectibles problem. See note 71, *infra*.

⁶⁹ AirTouch Comments at 13-14.

⁷⁰ The Katz and Majerus Study illustrates that billing and collection is characterized by strong economies of scale at the individual bill level. There are fixed costs associated with each individual bill that are large relative to the incremental cost of placing an additional record on a bill. Katz and Majerus Study at 5-6. AirTouch expects that, in the future, over 80 percent of CPP bills will be for less than \$5.00 per month. *Id.* at 5. AirTouch also estimates that it would incur costs of approximately \$1.00 to generate a single bill for a customer. (The Katz and Majerus Study indicates that this includes the costs of obtaining BNA, printing a bill, and mailing it, but the estimate does not include changes in billing software and systems to perform CPP billing and collection, or collection and customer inquiry costs. AirTouch estimates that, if it processed 2.4 million CPP bills per year, these full costs would amount to roughly \$9.00 per bill. *Id.* at 6 & n.4.) For comparative purposes, the Katz and Majerus Study points out that it generally costs merchants about \$3.00 to print and mail a paper bill. *Id.* at 6. See Billing Coalition Comments at 4; VoiceStream Comments at 7. The Billing Coalition also points out that CMRS carriers' use of BNA is not a viable alternative to the LECs' provision of billing and collection services. The cost of direct billing, plus the cost of acquiring BNA from the LEC, would make billing and collection prohibitively expensive for the CMRS carrier. Billing Coalition Comments at 11. In addition, BNA has little practical value — it takes too long to obtain; it can be unreliable; and it often is outdated. *Id.*

Parties opposing LEC billing and collection requirements have often cited clearinghouses as a non-LEC billing and collection alternative that will solve CPP billing and collection problems, but their attempt to pose this alternative serves as an instructive illustration of the general weaknesses in these parties' arguments regarding this issue. The simple fact of the matter is that clearinghouses have no capacity to carry out any billing and collection. The clearinghouses depend upon contracts with LECs for actual billing and collection.⁷² The clearinghouses serve merely to aggregate billing information from multiple companies and funnel this information into the LECs' billing systems. If clearinghouses seek to expand the types of services for which they provide this service, their contractual arrangements with the LECs require that they obtain LEC approval before doing so. Given these facts, it should be plain to see that clearinghouses cannot solve the central billing and collection problems facing CPP providers because the operations of the clearinghouses are completely intertwined with, and dependent upon, the billing and collection operations of the LECs.

The issue of the workability of non-LEC alternatives is made even easier to resolve by the fact that CPP opponents offer virtually no rebuttal to the catalogue of problems that the record demonstrates would be caused by a failure to make LEC billing and collection available for CPP.

⁷¹ AirTouch Comments at 14-16. AirTouch points out, for example, that “[e]vidence before the Commission establishes that uncollectible accounts are, *at best*, nearly 50% when separate bills are used by third parties using LEC-provided BNA, in sharp contrast to a usual uncollectibles rate of 10% for charges billed on the LEC bill.” *Id.* at 16 (emphasis in original) (footnote omitted). See America One Comments at 3, 8; USCC Comments at 8-9.

⁷² As we previously indicated (see note 28, *supra*), one party in this proceeding, in fact, has argued that the Commission should invoke its ancillary jurisdiction to prevent LECs from unreasonably terminating or modifying their billing and collection agreements with clearinghouses. “The current LEC practice of terminating [billing and collection] agreements or
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We already have addressed the unconvincing arguments advanced by BellSouth, Bell Atlantic, and US West in their attempts to convince the Commission that LEC billing and collection should not be made available for CPP offerings.⁷³ Other parties hoping for this result do not fare any better.

Cincinnati Bell, for example, contends that there is “clear evidence that there are several options available to CMRS providers seeking to bill CPP charges. . . . [T]he CMRS provider could bill its own CPP charges, contract with a non-communications company to provide billing and collection, or could contract with a billing and collection clearinghouse.”⁷⁴ A mere listing of these alternatives, however, does not bring with it any demonstration that they would contribute in any way toward making CPP a marketable service. Cincinnati Bell fails to explain *how* these options in fact could be effectively utilized by CPP providers, or *why* the Commission should conclude that the evidence and arguments proving the contrary should be disregarded. GTE mirrors Cincinnati Bell, citing “credit card companies, third-party billing and collection vendors, and billing and collection by the CMRS provider itself” as suitable alternatives for LEC billing and collection, but also fails to address evidence and arguments in the record that these alternatives are unworkable in the context of CPP.⁷⁵

imposing unreasonable conditions on billing clearinghouses threatens the continued viability of many telecommunications carriers” Nevadacom Comments at 4. *See* Sprint Comments at 8.

⁷³ See pages 17-19, *supra*.

⁷⁴ Cincinnati Bell Comments at 5-6.

⁷⁵ GTE Comments at 33. *See* NTCA Comments at 7 (claiming that there are alternatives to LEC billing and collection, but ignoring evidence and arguments in the record regarding the various shortcomings of these alternatives); USTA Comments at 6-7 (contending that “an entire billing and collection industry has emerged as an alternative to ILEC billing and collection” and that mandatory ILEC billing and collection would be “regulatory overkill” but failing to counter

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GTE also argues that the “Commission may not regulate LEC provision of billing and collection . . . unless exercise of the agency’s ancillary jurisdiction is necessary[.]” and then maintains that it is not necessary in this case because there is no evidence that the market for billing and collection services in the CPP context is any less competitive than the billing and collection market in other contexts.⁷⁶ GTE, however, does not support this claim. Given the demonstrable problems associated with non-LEC billing and collection for CPP, a more convincing view is that the ILECs possess substantial market power in the provision of CPP billing and collection because of the lack of suitable substitutes for the ILEC services.⁷⁷

GTE also contends, echoing a point of view expressed by SBC in an earlier comment round in this proceeding,⁷⁸ that the Commission should rely on the fact that “LECs . . . have a

arguments that these billing and collection alternatives are inadequate substitutes for LEC services); Washington Utilities and Transportation Commission (Washington UTC) Comments at 4 (arguing that there are readily available alternatives to billing through LECs but omitting any analysis of evidence and claims in the record that these alternatives would not provide adequate billing and collection for CPP).

⁷⁶ GTE Comments at 33.

⁷⁷ Katz and Majerus Study at 9-10, 19-20.

⁷⁸ See Pilgrim Comments at 32-33 (referencing SBC arguments that the provision of billing and collection must be the product of negotiation between LECs and CPP providers, that LECs would weigh the potential burdens of providing billing and collection in the context of these negotiations and would make their business judgments accordingly, and that these are not issues that lend themselves to broad-based Federal regulation). SBC returns to this theme in its latest filing, making the following argument:

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strong incentive to negotiate billing and collection agreements because they are likely to need similar arrangements in order for their CMRS affiliates to offer CPP in other LECs' territories."⁷⁹ Perhaps GTE sees this as an example of the marketplace working in harmony with the statutory objectives which the Commission is charged with promoting and protecting, thus relegating the Commission to a subsidiary role. It would seem perilous, however, for the Commission to be satisfied that the realization of these statutory objectives can be dependent upon the course of LEC business plans. To cite one pitfall of GTE's argument, it is Pilgrim's understanding that SBC does not plan to offer CPP through its affiliates and will also persist in its refusal to make

If competitive market forces are relied upon to produce efficient CMRS carrier marketing, pricing, investment, and research and development decisions, competition and consumer demand will also efficiently guide carriers' assessments of likely success or failure of potential new service offerings. Regulatory intervention regarding the billing and collection aspects of CPP could distort what would otherwise be an efficient result of the competitive process.

SBC Comments, Attachment, Douglas Mudd, "Calling Party Pays: Let the Market Decide," Sept. 1999, at 36 (*italicized in original*). Pilgrim believes, however, that the competitive process cannot render an "efficient result" in the case of CPP unless CPP is able to be fairly tested in the marketplace. As the record amply demonstrates, the availability of LEC billing and collection is the only means by which such a test can be secured. Moreover, as the record also documents, the Commission should not hesitate in taking the action necessary to ensure that CPP receives this marketplace test because CPP has the potential of promoting a variety of statutory objectives.

⁷⁹ GTE Comments at 34. Qwest also argues that it is possible that ILECs might be willing to provide billing and collection services for CPP, and that CPP providers should be free to employ these ILEC services. Qwest Communications Corporation (Qwest) Comments at 8. But Qwest fails to acknowledge or address the evidence and arguments in the record regarding the problems CMRS carriers face in marketing CPP if ILECs are not willing to make their billing and collection services available to CPP providers. *See also* Ameritech Comments at 5-6 (suggesting that CMRS carriers can negotiate with wireline carriers for billing and collection, but failing to comment on the problems that would confront CMRS providers if LECs refused to negotiate); Illuminet, Inc. (Illuminet) Comments at 7 (arguing that market forces will cause LECs to facilitate workable billing and collection services, but conceding that some LECs may choose not to offer CPP billing and collection due to strategic or other business reasons).

billing and collection services available to CPP providers in SBC territories. SBC business policies would thus wall off nearly one-third of the Nation's access lines⁸⁰ from LEC billing and collection for CPP.

In sum, a pivotal question for the Commission in deciding whether to require the availability of LEC billing and collection for CPP is whether there are suitable alternatives to these LEC services. The Commission now has before it a record that documents a convincing array of reasons why non-LEC billing and collection options will not be sufficient for the marketability of CPP. All of the key points of this documentation have gone unanswered by those parties opposing the availability of LEC billing and collection.

c. A Billing and Collection Requirement Would Not Impose Significant Costs or Burdens Upon Local Exchange Carriers

Pilgrim believes that CPP has the potential to enhance local exchange competition and advance other statutory objectives, that this potential cannot be realized in the absence of effective means to bill and collect for CPP, that LECs are uniquely situated to provide billing and collection services, and that CMRS carriers are significantly handicapped by the fact that the inadequacy of other billing and collection alternatives severely undercuts the marketability of CPP.

We also acknowledge that prudent public policy requires that the potential benefits of CPP, and the need for LEC billing and collection to realize those benefits, must be balanced against the costs and burdens that may be imposed upon LECs if they are required to furnish billing and collection for CPP. If the costs and burdens of imposing a Commission requirement

⁸⁰ See *FCC Delivers Merger Documents to Congress, Asks Delay on Queries*, WASH. TELECOM NEWSWIRE, Sept. 2, 1999, 1999 WL 7297407 (merged SBC-Ameritech will control "almost one-third of U.S. local access lines").

are likely to be significant, and there is some risk that these costs and burdens may go uncompensated, then the Commission faces a difficult task in justifying any decision to go forward.

Billing and collection for CPP, in Pilgrim's view, does not pose such risks. The record has provided strong evidence and arguments that LECs would not face substantial costs or burdens in providing billing and collection services for CPP. Nor is there any basis in the record to conclude that LECs would be handcuffed in their efforts to recoup their costs in providing these services. Finally, and most significantly, LECs and their supporters claim that costs and burdens would be excessive, but they fail to put into the record any information or evidence that might lend support for their claim. In fact, Pilgrim believes that the evidence is so strong in the other direction that we endorse the suggestions of several commenters that the Commission should consider taking measures to ensure that LECs do not charge excessive rates for CPP billing and collection.

An analysis of this issue should begin with the observation that it is logical to make the threshold assumption that LEC billing and collection for CPP should not be prohibitively burdensome or costly. LECs already have an extensive billing and collection infrastructure in place,⁸¹ and this infrastructure includes the capacity to generate monthly bills for millions of local exchange customers. LECs have engaged in billing and collection for casual calling services (including CPP)⁸² and have been able to do so in a manner that has included sufficient cost recovery.

⁸¹ See note 59, *supra*, and accompanying text.

⁸² See AirTouch Comments at 19.

The Katz and Majerus Study has presented evidence supporting the view that LECs would not incur significant costs in providing billing and collection services for CPP. The key to this finding is the fact that “billing and collection is characterized by strong economies of scale at the individual bill level . . . because there are fixed costs associated with each individual bill that are large relative to the incremental cost of placing an additional record on a bill.”⁸³ Thus, while it would be prohibitively expensive for CMRS carriers to incur the fixed costs associated with their generating bills for non-subscribing calling parties,⁸⁴ “the incremental billing costs of adding charges to a bill already being sent out are relatively low.”⁸⁵ The Katz and Majerus Study illustrates this point by indicating that the contract rate at which Ameritech provides CPP billing and collection services to AirTouch is 6 cents per CPP-billed call,⁸⁶ and by noting that ILECs charge approximately 12 to 13 cents per invoiced call for casual calling billing and collection.⁸⁷

⁸³ Katz and Majerus Study at 5-6. NTCA contends that LEC economies of scale are not relevant because the presence of scale economies “is true of many other billing agents.” NTCA Comments at 5. Pilgrim believes, however, that, for the reasons we have discussed, these other billing agents are not in a position to provide effective billing and collection services for CPP. In any event, NTCA is mistaken if it intends to suggest that LEC scale economies are not relevant to an evaluation of the costs that would confront LECs if they were required to provide billing and collection for CPP. There is a direct relationship between the extent of scale economies and the level of such costs.

⁸⁴ See the discussion at pages 26-27, *supra*.

⁸⁵ Katz and Majerus Study at 7. See VoiceStream Comments at 6-7. PCIA notes that, although it could not secure the actual incremental cost for adding a line of bill detail because ILECs treat this information as proprietary, a study performed for PCIA by DETECON, Inc., and included in the record of this proceeding, estimates the cost to be less than 1 cent. PCIA Comments at 40. Also see the discussion in the text accompanying note 64, *supra*.

⁸⁶ Katz and Majerus Study at 7.

⁸⁷ *Id.* (citing MCI, Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, filed May 19, 1997, at 5).

Thus, there is evidence in the record supporting the common sense view that LECs would not face steep fixed costs in billing and collecting for CPP because they already have the necessary infrastructure in place, and that the incremental costs associated with adding CPP charges to LEC monthly bills would be small. In these circumstances, LECs and their supporters should be under some obligation to back up their contrary assertions about burdens and costs. The record of comments in response to the *CPP Rulemaking Notice* reveals, however, that parties opposing a LEC billing and collection requirement have made little effort to provide evidence that would support their claims regarding the costs and burdens such a requirement would cause.⁸⁸

BellSouth claims, for example, that mandated billing and collection could impose significant costs upon LECs, even though, according to BellSouth, it is not currently possible to fully quantify all the potential costs of implementing CPP.⁸⁹ BellSouth argues that CPP billing and collection “will require LECs to upgrade software and hardware” and that “the cost of modifying these systems is enormous.”⁹⁰ In support of this assertion, BellSouth makes reference to its comments in another Commission proceeding, and states that the redesign or insertion of a single

⁸⁸ We note that SBC, in its earlier comments responding to the *CPP Notice of Inquiry*, contended that it would be expensive for LECs to provide billing and collection services, citing, for example, the fact that LECs would need to notify customers that the LECs were billing and collecting for CPP, and LECs would need to train their personnel to answer customer questions about CPP charges. SBC Comments to NOI at 16-17. Pilgrim observed in our comments that SBC had not documented or elaborated the level of these costs. Pilgrim Comments at 31-32. SBC has returned to this issue only obliquely in its comments responding to the *CPP Rulemaking Notice*. See SBC Comments at 10. Also see note 97, *infra*, and accompanying text.

⁸⁹ BellSouth Comments at 19. Many of the currently unquantifiable potential costs cited by BellSouth, *e.g.*, consumer education, customer notification and protection, the impact of a billing and collection requirement upon other regulatory initiatives, may not bear directly upon billing and collection and may not be costs that are imposed in whole or in part on LECs.

⁹⁰ *Id.* at 20.

bill page can cost as much as \$500,000 to \$1 million.⁹¹ BellSouth presents no information or explanation, however, regarding how this estimate was developed.⁹² In the absence of such data (which, presumably, BellSouth should be in a position to produce), the Commission has no basis to assign any probative value to BellSouth's claims.

BellSouth also suggests that it might not be able to recover its programming costs from CMRS carriers if it is required to provide CPP "billing and collection upon demand"⁹³ BellSouth depicts a scenario under which it is required by Commission regulation to undertake programming investments, but it receives no billing requests from CMRS providers, forcing it "to recover the cost of preparing for the unwanted billing service from its wireline ratepayers"⁹⁴

Pilgrim believes that BellSouth's fears are unfounded. The level of interest in CPP reflected in this proceeding strongly suggests that CMRS carriers would be keenly interested in making use of BellSouth's billing and collection resources. Moreover, it would be within the scope of the Commission's authority to structure a billing and collection requirement under which initial investment costs or obligations would not be triggered in the absence of any indica-

⁹¹ BellSouth Comments at 20 (citing BellSouth Comments, In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, filed Nov. 13, 1998, at 15). The BellSouth pleading in the Truth-in-Billing proceeding also points out that, in addition to programming costs, "each additional page of information would cost approximately \$0.07 per subscriber per month." BellSouth Comments, In the Matter of Truth-in-Billing and Billing Format, CC Docket No. 98-170, filed Nov. 13, 1998, at 15. This seems roughly comparable to the per call rate cited in the Katz and Majerus Study. See text accompanying note 86, *supra*.

⁹² That is also the case with respect BellSouth's pleading in the Truth-in-Billing proceeding, which it cites in its comments filed in this proceeding. On its face, the substantial range of the estimated costs suggests a certain imprecision in the derivation of the estimates.

⁹³ BellSouth Comments at 20.

⁹⁴ *Id.*

tion that CMRS carriers would subscribe to the LEC service.⁹⁵ For example, the Commission, in establishing requirements applicable to CMRS carriers for the implementation of enhanced wireless 911 features and functions, specified that the carriers would not be required to incur implementation costs unless Public Safety Answering Points had made requests to the carriers for the provision of the enhanced features and functions.⁹⁶ The Commission could examine similar mechanisms here, to ensure that LEC billing and collection services are available to CPP providers at compensatory rates while at the same time protecting LECs from the risks of unrecovered investment.

SBC is the only other LEC responding to the *CPP Rulemaking Notice* that attempts to address costs or burdens associated with LEC billing and collection. SBC maintains that “LECs should not be held responsible for handling what could be a host of consumer complaints concerning the new [CPP] service arrangement, and should not risk a potential reduction in the sale of their core services because of CPP ‘sticker shock.’”⁹⁷ SBC does not quantify the level of costs it might face as a result of customer complaints, project what volume the host of complaints might reach, or suggest that any of its costs associated with these complaints would go unrecovered.

⁹⁵ Bell Atlantic seems to have taken this matter into its own hands; PCIA notes that the carrier is requesting a “set-up fee” exceeding \$500,000 to provide CPP billing in New York. PCIA Comments at 43 n.111.

⁹⁶ See Section 20.18(f) of the Commission’s Rules, 47 C.F.R. § 20.18(f). (This subsection was recently redesignated as Section 20.18(i) by the Commission, but the text of the provision was not modified. The redesignation has not yet taken effect. See *Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Third Report and Order, FCC 99-245, released Oct. 6, 1999, at para. 95 & App. B.)

⁹⁷ SBC Comments at 10. SBC first presented its “sticker shock” concerns in an earlier comment round, see SBC Comments to NOI at 17, and adds nothing to the argument here. Pilgrim has already addressed the deficiencies of SBC’s speculative assertions. See Pilgrim Comments at 32.

ered. Moreover, SBC's concerns overlook the likelihood that the Commission's calling party notification requirements, coupled with consumer education initiatives, will minimize the incidence of consumer complaints.

Pilgrim believes that nothing in the record lends any credible weight to the claim that the Commission should refrain from adopting LEC billing and collection requirements because they might impose burdens or unrecoverable costs upon LECs. No opponent of such requirements has come forward with any evidence or arguments to support its admonition that Commission action would have such a result. On the other hand, several parties have submitted information and arguments that lend support to the common sense view that LECs have the infrastructure in place to provide CPP billing and collection at minimal cost, and that LECs should face no impediments in recovering these costs.

Pilgrim believes, in fact, that the LECs' control over this infrastructure should raise concerns regarding the LECs' ability to price CPP billing and collection services at excessive levels. The Katz and Majerus Study concludes that ILECs have sufficient market power with respect to CPP billing and collection to extract supra-competitive profits from their billing and collection services.⁹⁸ ILECs can "be expected to elevate [their] charges for these services above costs to the extent that regulators and the elasticity of demand [allow them] to do so profitably."⁹⁹ Pilgrim agrees with those parties who contend that CPP will never become a viable service offering without access to reasonably-priced ILEC billing and collection,¹⁰⁰ and we also agree with the

⁹⁸ Katz and Majerus Study at 19-20.

⁹⁹ *Id.* at 20.

¹⁰⁰ *See* PCIA Comments at 33-34; Sprint Comments at 10.

Billing Coalition's observation that there is unequal bargaining power between the ILECs (who control the local exchange bill) and CPP providers (who need access to the bill).¹⁰¹

The import of this pricing issue is that, if ILECs have the power to overprice CPP billing and collection services as well as the business motives to do so,¹⁰² then prices for these services would be set at levels that would negate the public policy objectives of requiring ILEC billing and collection in the first place. If ILECs are required by Commission rules to provide CPP billing and collection, but have unfettered discretion to set rate levels without reference to their costs or any other reasonable pricing measure, then ILECs can comply with the Commission rules and price CPP out of the marketplace at the same time.

Pilgrim thus believes that, if the Commission follows the record and sound public policy by requiring ILEC billing and collection for CPP, then the Commission must also give serious consideration to taking some action to restrict the otherwise unbridled power of ILECs to set prices at supra-competitive levels. Commenters have suggested two means by which the Commission could accomplish this result.

PCIA recommends that the Commission should prescribe "backstop" rules requiring ILECs to provide CCP billing and collection at incremental, cost-based rates, if private negotiations between CMRS carriers and ILECs fail.¹⁰³ Pilgrim supports consideration of such an approach, which presumably could be based upon the Total Element Long Run Incremental Cost

¹⁰¹ See Billing Coalition Comments at 8.

¹⁰² See Section IV.A.2.d, *infra*.

¹⁰³ PCIA Comments at 34.

(TELRIC) costing methodology developed by the Commission in connection with its implementation of the 1996 Act.¹⁰⁴

A second approach has been suggested by Sprint, under which the Commission would establish “presumptively reasonable” rates for CPP billing and collection.¹⁰⁵ Under this approach, LECs would be entitled to receive “fair compensation” for work performed in connection with providing billing and collection, including a “reasonable profit.”¹⁰⁶ Rates set by a LEC be-

¹⁰⁴ See generally *Local Competition Order*, 11 FCC Rcd at 15812-929 (paras. 618-862). The Commission, in adopting this methodology, stated its belief that:

our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry by establishing prices for interconnection and unbundled elements based on costs similar to those incurred by the incumbents, which may be expected to reduce the regulatory burdens and economic impact of our decision for many parties, including both small entities seeking to enter the local exchange markets and small incumbent LECs.

Id. at 15846 (para. 679).

¹⁰⁵ Sprint Comments at 10. Sprint indicates that its suggestion is based on a recent Commission decision establishing a method for determining the reasonableness of rates charged by telecommunications carriers for subscriber list information provided to requesting directory publishers. See *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, *Third Report and Order in CC Docket No. 96-115*, *Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98*, and *Notice of Proposed Rulemaking in CC Docket No. 99-273*, FCC 99-227, released Sept. 9, 1999 (*Subscriber List Order*), at paras. 71-107.

¹⁰⁶ Sprint Comments at 10. The *Subscriber List Order*, in determining presumptively reasonable rates, concluded that the rates “should allow LECs to recover their incremental costs of providing subscriber list information to directory publishers plus a reasonable allocation of common costs

(continued . . .)

low a level specified by the Commission would be presumed to be reasonable, but the LEC also would have flexibility to assess higher charges by demonstrating that the higher rates are justified by the LEC's costs.

Sprint also recommends that the Commission should seek supplemental comments for purposes of establishing presumptively reasonable rates for CPP billing and collection.¹⁰⁷ The approach suggested by Sprint, like the recommendation by PCIA for incremental, cost-based rates, would provide a means for the Commission to ensure that the public policy objectives driving a requirement that LECs provide billing and collection for CPP are not subverted by unchecked LEC pricing practices.

d. Local Exchange Carriers Have Anti-Competitive Incentives To Refuse To Bill and Collect for Calling Party Pays

The question of whether LECs have anti-competitive motives to withhold the provision of billing and collection services is an important issue for the Commission to examine in this proceeding.¹⁰⁸ If there is a basis to conclude that the LECs have an interest in blocking or hampering the entry of wireless carriers into local exchange markets in order to preserve the LECs' market share, then the Commission should evaluate LECs' assertions regarding the costs and burdens they would face in complying with a billing and collection requirement armed with the understanding that these assertions may in part be the product of an effort in the regulatory arena

and overheads. Basing rates on costs should promote the development of a competitive directory publishing market, while fairly compensating carriers" *Subscriber List Order* at para. 92.

¹⁰⁷ Sprint Comments at 11.

¹⁰⁸ The Commission recognized this by seeking comment on issues relating to possible anti-competitive conduct by LECs in connection with CPP billing and collection services. *See CPP Rulemaking Notice* at para. 61.

to stave off wireless carrier entry into LEC-dominated markets. Moreover, if the Commission reaches the view that such anti-competitive motives may be at work, then it should insist upon billing and collection pricing mechanisms that prevent the LECs from using their market power to impose excessive charges upon potential competitors.

The Katz and Majerus Study explains why it would be rational for ILECs to engage in anti-competitive conduct. Given the fact that an ILEC has market power with regard to the provision of CPP billing and collection, and given the fact that it has an incentive to maximize its profits, it is rational for an ILEC to attempt to raise its rivals' costs because "[d]oing so allows the ILEC to achieve, enhance, or maintain market power in the markets in which it competes with these disadvantaged rivals."¹⁰⁹ AT&T makes the same point, noting that ILECs may have an incentive to avoid offering billing and collection to CMRS carriers, "especially if the incumbent LEC in question has a wireless affiliate or wants to frustrate the development of wireless service as a substitute for landline offerings."¹¹⁰ The Billing Coalition also argues that LECs will have the incentive and ability to favor their own services over those of competitors in the absence of mandated billing and collection for CPP.¹¹¹

US West brings a different perspective to this issue but, in Pilgrim's view, ultimately (if inadvertently) proves the same point as its opponents. US West vigorously argues that the Com-

¹⁰⁹ Katz and Majerus Study at 20.

¹¹⁰ AT&T Comments at 8.

¹¹¹ Billing Coalition Comments at 7. The Billing Coalition also alleges that Bell Atlantic, SBC, and BellSouth have instituted moratoria on new party billing on their local exchange bills, and that competitors are denied access to LEC bills "for receiving even a minuscule number of complaints." *Id.* at 8. The Billing Coalition concludes that LECs can gain a significant competitive advantage if they are successful in driving competitive services off the local bill. *Id.*

mission should not require the LECs to “associate” with unaffiliated parties on the bills that LECs issue to their customers.¹¹² US West tells us that this is because “LECs are going to want to differentiate themselves from other providers who will be their competitors[,]” and to bundle their billings “into packages that include a range of telecommunications and non-telecommunications offerings.”¹¹³ Given these business plans, US West argues that “[i]t would be terrible public policy for the Commission to hold LECs’ billing to their own customers hostage to a requirement that they bill for others when they bill for themselves or their affiliated companies. Such is not fairness but regulatory blackmail.”¹¹⁴

Pilgrim believes that the weight of the evidence in the record of this proceeding cuts against the US West arguments. We have argued here and in our earlier comments that public policy requires that the Commission mandate LEC billing and collection because CMRS providers will not be able to market CPP, and its potential to benefit consumers and competition will be lost, without access to LEC billing and collection services. Moreover, LEC control of this billing and collection infrastructure gives the LECs considerable market power.

Coupled with these considerations is the fact that the point of view expressed by US West brings special emphasis to the concern raised by the Billing Coalition and others that LECs have a motive to keep competitors off their local exchange bills. US West’s comments prove this point. In Pilgrim’s view, the Commission can find US West’s arguments to be reasonable only if the Commission also overlooks the fact that the LECs’ billing and collection infrastructure was

¹¹² US West Comments at 22.

¹¹³ *Id.* (footnote omitted).

¹¹⁴ *Id.*

funded by monopoly ratepayers, that local exchange markets are not competitive, and that LECs wield considerable market power with respect to CPP billing and collection. If these facts are not overlooked, then it is difficult to ignore the anti-competitive motives that would likely lead to excessive billing and collection rates (if LEC billing and collection is mandated without any pricing safeguards), or to blink the fact that US West has described the motives that LECs may have to leverage their control of the local bill in order to gain a competitive advantage in their marketing of a range of telecommunications and non-telecommunications offerings.¹¹⁵

B. The Commission Alternatively Has Sufficient Statutory Authority To Require Incumbent Local Exchange Carriers To Provide Billing and Collection as an Unbundled Network Element

Although Pilgrim believes that the Commission's ancillary jurisdiction provides a sufficient basis to establish LEC billing and collection requirements, we also endorse suggestions made in the record¹¹⁶ that the Commission has authority under Section 251 of the Act to require ILECs to make billing and collection services available on an unbundled basis.¹¹⁷

¹¹⁵ These facts, in Pilgrim's view, also answer an argument advanced by Washington UTC that "[r]equiring LECs to provide specific billing and collection services would place a burden on LECs that other billing and collection service providers do not face." Washington UTC Comments at 5. Establishing CPP billing and collection requirements that are applicable only to LECs is a justifiable public policy because the LECs wield power in the CPP billing and collection market that is not matched by any alternative provider of billing and collection. Also see the discussion in note 116, *infra*.

¹¹⁶ See PCIA Comments at 44-51. We also note in passing that BellSouth has argued that "[w]hether the provision of billing information can be considered a UNE is ultimately irrelevant" because "[a]ny decision to apply mandatory billing and collection to ILECs *alone* [under Section 251 of the Act] would be arbitrary and capricious and constitute reversible error." BellSouth Comments at 3-4 (emphasis added) (footnote omitted). BellSouth seeks to explain this assertion by observing that ILEC and non-ILEC carriers "are identically situated with regard to the CPP call, and . . . must be treated alike as far as any billing and collection is concerned." *Id.* at 3. BellSouth does not proceed any further with this legal analysis.

(continued . . .)